

(2) When necessary to acquaint the applicant with the substance of a classified document, the classifying authority, on the request of the NDRB, shall prepare a summary of or an extract from the document, deleting all references to sources of information and other matters, the disclosure of which, in the opinion of the classifying authority, would be detrimental to the national security interests of the United States. Should preparation of such summary be deemed impracticable by the classifying authority, information from the classified source shall not be considered by the NDRB in its review of the case.

(e) Regulations of a military department may be obtained at many installations under the jurisdiction of the Military Department concerned or by writing to the following address: DA Military Review Boards Agency, Attention: SFBA (Reading Room), Room 1E520, The Pentagon, Washington, DC 20310.

[50 FR 10943, Mar. 19, 1985, as amended at 65 FR 62616, Oct. 19, 2000]

§ 724.213 Attendance of witnesses.

Arrangement for attendance of witnesses testifying in behalf of the applicant at discharge review hearings is the responsibility of the applicant. The NDRB is not authorized to subpoena or otherwise require their presence.

§ 724.214 Applicant's expenses.

Unless otherwise specified by law or regulation, expenses incurred by the applicant, witnesses, or counsel/representative will not be paid by the Department of Defense. The NDRB is not authorized to issue orders or other process to enable the applicant to appear in person.

§ 724.215 Military representation.

Military officers, except those acting pursuant to specific detailing by appropriate authorities desiring to act for or on behalf of an applicant in the presentation of a case before an NDRB Panel are advised to consult legal counsel before undertaking such representation. Such representation may be prohibited by 18 U.S.C. 205.

§ 724.216 Failure to appear at a hearing or respond to a scheduling notice.

(a) Except as otherwise authorized by the Secretary concerned, further opportunity for a hearing shall not be made available in the following circumstances to an applicant who has requested a hearing:

(1) When the applicant has been sent a letter containing the month and location of a proposed hearing and fails to make a timely response; or

(2) When the applicant, after being notified by letter of the time and place of the hearing, fails to appear at the appointed time, either in person or by representative, without having made a prior, timely request for a continuation, postponement, or withdrawal.

(b) In such cases, the applicant shall be deemed to have waived the right to a hearing, and the NDRB shall complete its review of the discharge. Further request for a hearing shall not be granted unless the applicant can demonstrate that the failure to appear or respond was due to circumstances beyond the applicant's control.

§ 724.217 Limitation—Reconsiderations.

A discharge review shall not be subject to reconsideration except:

(a) When the only previous consideration of the case was on the motion of the NDRB;

(b) When the original discharge review did not involve a personal hearing and a hearing is now desired, and the provisions of § 724.216 do not apply;

(c) When changes in discharge policy are announced after an earlier review of an applicant's discharge, and the new policy is made expressly retroactive;

(d) When the NDRB determines that policies and procedures under which the applicant was discharged differ in material respects from policies and procedures currently applicable on a service-wide basis to discharges of the type under consideration, provided that such changes in policies or procedures represent a substantial enhancement of the rights afforded an applicant in such proceedings;

(e) When an individual is to be represented by counsel or representative,

§ 724.218

and was not so represented in any previous consideration of the case by the NDRB;

(f) When the case was not previously considered under uniform standards published pursuant to Pub. L. 95-126 and such application is made within 15 years after the date of discharge; or

(g) On the basis of presentation of new, substantial, relevant evidence not available to the applicant at the time of the original review. The decision whether evidence offered by an applicant in support of a request for reconsideration is in fact new, substantial, relevant, and was not available to the applicant at the time of the original review will be based on a comparison of such evidence with the evidence considered in the previous discharge review. If this comparison shows that the evidence submitted would have had a probable effect on matters concerning the propriety or equity of the discharge, the request for reconsideration shall be granted.

§ 724.218 Limitation—Continuance and Postponements.

(a) A continuance of a discharge review hearing may be authorized by the President of the NDRB or presiding officer of the panel concerned, provided that such continuance is of reasonable duration and is essential to achieving a full and fair hearing. When a proposal for continuance is indefinite, the pending application shall be returned to the applicant with the option to resubmit when the case is fully ready for review.

(b) Postponements of scheduled reviews normally shall not be permitted other than for demonstrated good and sufficient reason set forth by the applicant in a timely manner or for the convenience of the government.

§ 724.219 Withdrawal of application.

An applicant shall be permitted to withdraw an application without prejudice at any time before the scheduled review, except that failure to appear for a scheduled hearing shall not be construed or accepted as a withdrawal.

§ 724.220 Review on motion of the NDRB.

Reviews of Naval discharges may be initiated by the NDRB on its own mo-

32 CFR Ch. VI (7-1-08 Edition)

tion (10 U.S.C. 1553) which includes reviews requested by the Veterans Administration under 38 U.S.C. 101, 3103 as amended by Pub. L. 95-126 of October 8, 1977 (See Pub. L. 98-209).

§ 724.221 Scheduling of discharge reviews.

(a) If an applicant requests a personal appearance discharge review, or to be represented in absentia, the NDRB shall provide a hearing in the NCR or at another site within the forty-eight contiguous states.

(b) The NDRB shall subsequently notify the applicant and representative (if any) in writing of the proposed personal appearance hearing time and place. This notice shall normally be mailed thirty to sixty days prior to the date of the hearing. If the applicant elects, this time limit may be waived and an earlier date set.

(c) When an applicant requests a documentary review, the NDRB shall undertake the review as soon as practicable. Normally, documentary reviews shall be conducted in the order in which they are received.

§ 724.222 Personal appearance discharge hearing sites.

(a) The NDRB shall be permanently located, together with its administrative staff, in the NCR. The NDRB shall routinely conduct personal appearance discharge reviews and documentary reviews at this, its permanent office.

(b) In addition, as permitted by available resources, NDRB Panels shall travel to other selected sites within the contiguous 48 states for the purpose of conducting reviews. The selection of sites and frequency of visits shall be predicated on the number of requests pending within a region and the availability of resources.

§ 724.223 NDRB support and augmentation by regular and reserve activities.

(a) When an NDRB Panel travels for the purpose of conducting hearings, it shall normally select Navy or Marine Corps installations in the area visited as review sites.

(b) The NDRB Traveling Board shall normally consist of members from the NCPB and augmentees from regular